

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ESTHEFANY HEREDIA, ESLAINI FERNANDEZ, :
and ESTELA TAVERAS, : ECF
Individually and on Behalf of All Other : 17 Civ. 06219 (WHP)(HBP)
Persons Similarly Situated, :
: Plaintiffs, :
: :
-against- :
: :
AMERICARE, INC., MARTIN KLEINMAN and :
JOHN DOES #1-10, :
: :
Defendants. :-----X

AFFIDAVIT OF ESLAINI FERNANDEZ

**IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND
IN SUPPORT OF PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT**

Dated: New York, New York
February 27, 2020

LAW OFFICE OF WILLIAM COUDERT RAND
William Coudert Rand, Esq.
Attorney for Plaintiff, Individually,
and on Behalf of All Other Persons Similarly Situated
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AFFIDAVIT/ DECLARATION OF ESLAINI FERNANDEZ

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, ESLAINI FERNANDEZ, hereby declare under penalty of perjury under the laws of the United States of America that the following is true:

1. I was a home health aide/maid employed by AMERICARE, INC. and its owner and/or President, Martin Kleinman, (collectively "Defendants"), from about July 13, 2010 until the present (the "time period").
2. I speak and read Spanish but cannot speak or understand or read English.
3. I have attached as Exhibit A, written complaints, that I emailed to my coordinator, Lucy Moralis, at lmoralis@americareny.com on the dates listed on the complaints, which communicate that I was not able to get 5 hours of uninterrupted sleep or three one hour breaks during my 24 hour live in shifts.
4. Lucy Moralis called me and demanded that I stop sending the emails reporting my lack of sleep or breaks or she would terminate me. Accordingly I stopped sending the emails as often even though I continued not to get sleep or breaks during my 24 hour shifts. I have attached as Exhibit B my notes showing that I continued not to get sleep or breaks during my 24 hour shifts.
5. Throughout my employment by Defendants, I have complained to my coordinator orally and at times in writing by texts and emails that I have not been able to get 5 hours of uninterrupted sleep or three one hour breaks during my 24 hour shifts.

6. Despite my complaints, I have never been paid more for more than 13 hours of my 24 hour live in shifts.

7. I have never been told by any employee of Americare that I am required to report lack of sleep or breaks during my 24 hour live in shifts.

8. Until today, I was not aware of any policy requiring me to report lack of sleep or breaks during my 24 hour live in shifts. I did sign some documents that were written in English but I did not know what they said and the documents were not translated for me.

9. Today I was shown Exhibit X to the Declaration of Defense counsel in support of his motion for summary judgment which is attached hereto as Exhibit C. I have never seen this exhibit prior to today and was not aware until today that there was a code “55” to report a lack of breaks during 24 hour shifts.

10. I also was never told by Defendants that there was a code to use to report lack of sleep or breaks at the end of my 24 hour live in shifts.

11. I first learned there was a code to report lack of sleep during 24 hour shifts when I attended the settlement conference in court on July 31, 2019 and the Defendants argued that my failure to use the code to report my lack of sleep showed that I was actually getting sleep.

12. I only today learned from Defendants’ Summary Judgment papers that there is a code to report lack of breaks during 24 hour shifts.

13. After July 31, 2019, I started to use the code to report my failure to get 5 hours of uninterrupted sleep during my 24 hour shifts, but I still only paid 13 hours for these 24 hour shifts.

14. I have attached as Exhibit D records I obtained from Americare showing my reporting by code “66” my lack of sleep during each of my four 24 hour live in shifts during the

period September 7, 2019 to September 13, 2019, and my paystub for the same period showing I was paid only 13 hours for each of these shifts.

15. I have attached as Exhibit E additional records showing my use of the code to report my lack of sleep and the paystubs showing I was still not paid more than 13 hours pre shift.

16. At noon on November 22, 2019, Maria, the supervisor of the coordinators, called me and told me to stop reporting that I was not getting sleep during my 24 hour shifts or she would terminate me. I have attached as Exhibit F my detailed notes regarding the call.

17. Accordingly, even though I continued not to get sleep during my 24 hour shifts, I stopped using the code to report the lack of sleep because I did not want to get terminated.

18. I began today to start reporting my lack of sleep using the code.

19. I recently received payment for overtime hours and live in shift hours entitled legal settlement. I have attached the paystub as Exhibit G. I called the company telephone number on the paystub and no one answers the phone. I have no understanding of what these payments represent and what legal settlement is being referenced. I believe these payments are an admission by Americare that they failed to previously pay me for these hours.

20. I have attached as Exhibit H paystubs showing that I was not paid time and one half my regular wage rate for hours over 40 in a workweek ("overtime") after October 13, 2015.

21. My first language is Spanish and I do not speak English but have had this declaration translated for me and believe it to be correct.

Dated: New York, New York
January 30, 2020

Esplaini Fernandez
ESLAINI FERNANDEZ

Sworn to before me this 30th day of July, 2019

WTC R1
Notary Public

